

Remarks:

**R25** Claims 1 to 10, 12, and 13 are pending in the application.

**R26** Claims 1, 3 to 10, and 12 stand rejected.

**R27** Un-entered amendments to claims 1 and 10 requisitioned by the Examiner's in the final Office Action at points 7 and 8 are being submitted herein. Instances of "wireless mobile station" have been amended to read --wireless device--.

**R28** Independent claims 1, 10 and 12 have been amended in response to Examiner's reasons articulated in the Advisory Action. The claim element "a carrier company associated with the wireless device" now reads --a particular carrier company associated with the wireless device--. Support for the amendment is found at page 10 line 17 of the originally filed application. Further amendments have been made to claim 12 to improve consistency between independent claims 1, 10 and 12.

**R29** It is submitted that no additional subject matter has been introduced by the amendment.

Arguments:Double patenting objection:

A17 Claims 1 to 10, 12 and 13 stand rejected on the ground of non-statutory double patenting over U.S. Patent 7,222,340 in view of Birum and O'Neill. Applicant respectfully disagrees.

Independent claims 1, 10 and 12, as amended, require "sending a software identifier along with an identifier indicating a particular carrier company associated with the wireless mobile device to the network", and to a mobile station sending same.

a) In paragraphs 2 and 3 on page 10 of the outstanding final Office Action, Examiner contends that O'Neill teaches "sending a software identifier identifying a carrier telecommunications company associated with the wireless mobile station to said network".

Applicant respectfully submits that a "software identifier identifying a carrier telecommunications company" is not claimed. Independent claims 1, 10 and 12 now require "sending an identifier indicating a particular carrier company associated with the wireless device to the network".

If, as Examiner contends, O'Neill teaches "sending a software identifier identifying a carrier telecommunications company" then O'Neill teaches away from the claimed invention.

Furthermore, Applicant respectfully submits that, O'Neill does not describe or teach a carrier company identifier.

Applicant has reviewed the prior art cited by the Examiner. According to the Applicant's understanding of the applied references when taken as a whole, the Applicant submits that the art of record does not disclose, teach, suggest or contemplate sending an identifier indicating a

particular carrier company associated with the wireless device as set forth in independent claims

1, 10 and 12.

Applicant respectfully submits that paragraph [0037] of O'Neill relates to a distribution environment while paragraph [0047] of O'Neill relates to a generation environment. O'Neill's paragraph [0031] defines both environments:

"... The generation environment 111 may comprise one or more computing devices and application software capable of generating one or more software updates for one or more types of wireless communication devices 109. The distribution environment 107 comprises a network such as a client server network or the like that is capable of storing and transmitting software updates to one or more wireless communication devices 109. ..."

Based on the definitions of the generation environment and the distribution environment, the generation environment is not the distribution environment. Applicant respectfully submits that if the generation environment is owned and operated by a carrier and if the wireless communication device in O'Neill only communicates with the distribution environment, the description in O'Neill is insufficient to describe "a wireless device sending a software identifier and an identifier identifying a particular carrier telecommunications company associated with the wireless device to [a] network".

b) Examiner further opines that the make and model inherently indicates a carrier.

Application respectfully disagrees.

For example, for the Research In Motion Blackberry Curve 8900, the make is RIM, the model is Blackberry Curve 8900. The Blackberry Curve 8900 is supported in the U.S. by AT&T and T-Mobile, in UK by BT, O2 UK, T-Mobile UK, and Vodafone UK, and Ireland by O2 Ireland and Vodafone Ireland. Applicant respectfully submits that the make and model of a wireless device is insufficient to identify a particular carrier because in the United States two

United States carriers support the same make and model, because in the United Kingdom three

British carriers support the same make and model, and because in Ireland two Irish carriers support the same make and model.

Therefore, applicant respectfully submits that a case of double patenting has not been established in respect of claims 1 to 10, 12 and 13 by failure to produce prior art teaching of each and every element and step claimed.

Obviousness objection:

**A18** Claims 1, 3 to 10 and 12 stand rejected under 35 U.S.C. §103(a) as unpatentable over Birum in view of O'Neill. Applicant respectfully disagrees.

Independent claims 1, 10 and 12, as amended, require the sending of a software identifier along with an identifier indicating a particular carrier company associated with the wireless device to a network, and to a wireless mobile station sending same.

Birum does not describe sending an identifier indicating a particular carrier company associated with the wireless device as stated by the Examiner on pages 14(bottom) and 20(middle) of the outstanding Office Action. Applicant respectfully submits that O'Neill does not cure the deficiency:

a) With respect to claim 12, Examiner contends that O'Neill teaches "sending a software identifier identifying a carrier telecommunications company associated with the wireless mobile station to said network". Applicant respectfully submits that a "software identifier identifying a

carrier telecommunications company" is not claimed in amended claim 12. If, as Examiner

contends, O'Neill teaches "sending a software identifier identifying a carrier telecommunications company" then O'Neill teaches away from the claimed invention.

b) Applicant respectfully submits that, O'Neill does not describe or teach a carrier company identifier.

Applicant has reviewed the prior art cited by the Examiner. According to the Applicant's understanding of the applied references when taken as a whole, the Applicant submits that the art of record does not disclose, teach, suggest or contemplate sending an identifier indicating a particular carrier company associated with the wireless device as set forth in independent claims 1, 10 and 12.

Applicant respectfully submits that paragraph [0037] of O'Neill relates to a distribution environment while paragraph [0047] of O'Neill relates to a generation environment. O'Neill's paragraph [0031] defines both environments:

"... The generation environment 111 may comprise one or more computing devices and application software capable of generating one or more software updates for one or more types of wireless communication devices 109. The distribution environment 107 comprises a network such as a client server network or the like that is capable of storing and transmitting software updates to one or more wireless communication devices 109. ..."

Based on the definitions of the generation environment and the distribution environment, the generation environment is not the distribution environment. Applicant respectfully submits that if the generation environment is owned and operated by a carrier and if the wireless communication device in O'Neill only communicates with the distribution environment, the description in O'Neill is insufficient to describe "a wireless device sending a software identifier

and an identifier identifying a particular carrier telecommunications company associated with the wireless device to [a] network”.

c) Applicant respectfully submits that what a wireless communications device sends is described by O'Neill in paragraphs [0037], [0041], [0042] and [0043] neither of which describe “sending a software identifier and an identifier identifying a particular carrier telecommunications company associated with the wireless device to [a] network”.

d) Examiner further opines that the make and model inherently indicates a carrier.

For the reasons submitted above, the Applicant respectfully submits that the make and model is insufficient to identify a carrier because in the United States two United States carriers support the same make and model, because in the United Kingdom three British carriers support the same make and model, and because in Ireland two Irish carriers support the same make and model.

Therefore, applicant respectfully submits that a case of obviousness has not been established in respect of claims 1, 3 to 10 and 12 by failure to produce prior art teaching of each and every element and step claimed.

A19 Claims 2 and 13 stand rejected under 35 U.S.C. §103(a) over Birum in view of O'Neill and Moore. Applicant respectfully disagrees.

Dependent claims 2 and 13 respectively depend directly from independent claims 1 and 12 and therefore incorporate all respective limitations of independent claims 1 and 12. The articulated rejection relies on the teachings of Birum and O'Neill. Moore does not cure the

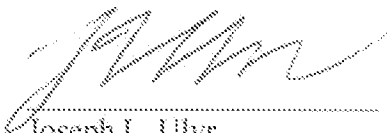
deficiency in Birum and O'Neil with respect to sending an identifier indicating a particular carrier company associated with the wireless device.

Applicant respectfully submits that a case of obviousness in respect of dependent claims 2 and 13 has not been established.

Applicant respectfully submits that the above arguments raise questions regarding the establishment of a case of unpatentability.

Reconsideration and allowance are respectfully requested.

Respectfully submitted,



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